

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No.25 of 2001**

Miss N.L. Layana D/o N.B. Lalsan, aged about 21 years, R/o 11 old Nehru Nagar, P.O. Nehru Nagar, Bhilai, Dist. Durg Chhattisgarh

---- Petitioner

Versus

1. Municipal Corporation, Bhilai Through its Commissioner Bhilai, Dist.Durg
2. Asstt. Commissioner Municipal Corporation, Bhilai, Distt.Durg, Chhattisgarh

---- Respondents

For Petitioner	:	Mr.Sunil Pillai, Advocate
For Respondents :		Mr.H.B.Agrawal, Senior Advocate with Mrs.Prabha Sharma, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

28/06/2017

1. The petitioner was allotted a plot No.1-B (Block 4) 352 sq.mtrs. in Priyadarshini Awas Yojna and said allotment was set aside/cancelled by order dated 16.10.2000 (Annexure A/4).
2. Learned counsel for the petitioner would submit that the order has been passed without providing an opportunity of hearing to the petitioner and the order of land allotment has been revoked which has a civil consequence. That cannot be done without affording a reasonable opportunity of hearing to the petitioner.
3. On the other hand, learned Senior Counsel appearing for the respondents would submit that such an order is in accordance with the decision of Appeal Committee dated 27.9.2000.

4. The law in this regard is no longer res-integra. Their Lordships of the Supreme Court in the matter of Shrawan Kumar Jha and others Vs. State of Bihar and others¹ have held that holders of appointment orders are entitled to opportunity of hearing before cancelling their appointments. Cancellation orders without complying with rules of natural justice is liable to be set aside. It was observed as under:-

“3..... we are of the view that the appellants should have been given an opportunity of hearing before cancelling their appointments. Admittedly, no such opportunity was afforded to them. It is well settled that no order to the detriment of the appellants could be passed without complying with the rules of natural justice. We set aside the impugned order of cancellation dated November 3, 1988 on this short ground.”

5. Their Lordships of the Supreme Court in the matter of D.K. Yadav Vs. J.M.A. Industries Ltd.² have held that order involving civil consequence must be in consonance with principles of natural justice. It was observed as under:-

“8. The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely' the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority to act arbitrarily effecting the rights of the concerned person.

9. It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and be given him/ her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In Mohinder Singh Gill &

1 1991 Supp (1) SCC 330

2 (1993) 3 SCC 259

Anr. v. The Chief Election Commissioner & Ors.³ the Constitution Bench held that 'civil consequence' covers infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation every thing that affects a citizen in his civil life inflicts a civil consequence. Black's Law Dictionary, 4th Edition, page 1487 defined civil rights are such as belong to every citizen of the state or country they include rights capable of being enforced or redressed in a civil action. In *State of Orissa v. Dr. (Miss) Binapani Dei & Ors.*,⁴ this court held that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence in support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principles of natural justice.

10. In *State of West Bengal v. Anwar Ali Sarkar*⁵, per majority, a seven Judge bench held that the rule of procedure laid down by law comes as much within the purview of Art. 14 of the Constitution as any rule of substantive law. In *Maneka Gandhi v. Union of India*⁶ another bench of seven judges held that the substantive and procedural laws and action taken under them will have to pass the test under Art. 14. The test of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The tests have to be pragmatic otherwise they would cease to be reasonable. The procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the right of that individual. The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent fundamental rights of citizens, must take care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice.

11. The law must therefore be now taken to be well-settled that procedure prescribed for depriving a person of

3 (1978) 1 SCC 405

4 (1967) 2 SCR 625

5 1952 SCR 284

6 (1978) 1 SCC 248

livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Art. 14 and the procedure prescribed by a statute or statutory rule or rules or orders effecting the civil rights or result in civil consequences would have to answer the requirement of Art. 14. So it must be right, just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative inquiry as well as the quasi-judicial enquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial enquiry and not to administrative enquiry. It must logically apply to both.

12. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Art. 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by this Court that the principles of natural justice are part of Art. 14 and the procedure prescribed by law must be just, fair and reasonable.”

6. Similar is the proposition of law laid by the Supreme Court in the matter of **Nisha Devi Vs. State of Himachal Pradesh and others**⁷ in which Their Lordships have held that principle of audi alteram partem admits of no exception, and has to be adhered to in all circumstances. It was observed as under:-

“5 Trite though it is, we may yet again reiterate that the principle of audi alteram partem admits of no exception, and demands to be adhered to in all circumstances. In other words, before arriving at any decision which has serious implications and consequences to any person,

7 (2014) 16 SCC 392

such person must be heard in his defence. We find that the High Court did not notice the violation and infraction of this salutary principle of law. Accordingly, on this short ground, the impugned judgments and orders require to be set aside, and are so done.....”

7. In the light of principles of law laid down by the Supreme Court in the above-stated judgments (supra), if the facts of the present case are examined, it is quite vivid that order of land allotment to the petitioner has been revoked without giving an opportunity of hearing and thus that has caused serious prejudice to him. Therefore, the impugned order dated 16.10.2000 (Annexure A/4) is set aside. However, this will not bar the respondents to proceed in accordance with law after giving an opportunity of hearing to the petitioner.
8. The writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

B/-